

July 14, 2020 – Open Meeting Matter

To: The Board

From: Chad H. Gholizadeh

Date: May 26, 2020

Re: Proposed Amendments to Board Rules § 1-01(c): Gifts from Family Members & Close Personal Friends

As part of its review of the Board's rules, practices, advisory opinions, and enforcement dispositions in accordance with the mandate of City Charter § 2603(c)(4), Staff brings to the Board proposed amendments to Board Rules § 1-01(c), which defines the exception articulated in City Charter § 2604(b)(5) permitting a public servant to accept a valuable gift that "is customary on family and social occasions."

Existing Board Rules § 1-01(c) provides a standard when public servants may accept otherwise prohibited gifts from family members and close personal friends on those events. The proposed amendments to Board Rules § 1-01(c) would:

- Separate gifts from family members, a narrowly defined term, from those from close personal friends.
- Define "family member" to include step-relatives, consistent with the Board's longstanding practice.
- Provide specific factors under which public servants may accept gifts from close personal friends.

Attached are the following:

1. Notice of Public Hearing and Opportunity to Comment (Exhibit 1); and
2. Existing Board Rules § 1-01(c) alongside Proposed Board Rules § 1-01(c) (Exhibit 2).

Staff has consulted informally with the New York City Law Department about the proposed amendments. With the Board's approval, Staff will formally submit the proposed

amendments to the Law Department and Mayor's Office of Operations, as required by the City Administrative Procedure Act. See City Charter § 1043(d).

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Rules Regarding Gifts

What are we proposing? The Conflicts of Interest Board is proposing to amend its rule governing the acceptance of gifts by public servants from family members and close personal friends.

When and where is the Hearing? The Conflicts of Interest Board will hold a public hearing on the proposed rule. The public hearing will take place by video conference at [] on [] and is accessible by:

- **Internet Video and Audio.** To access the hearing by Zoom, use the following URL: [].
- **Telephone.** To access the hearing by telephone, dial []. When prompted, use the following access code [] and password [].

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Conflicts of Interest Board through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rules@COIB.nyc.gov.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing may speak for up to three minutes. Please access the public hearing by Internet Video and Audio or by Telephone using the instructions above. It is recommended, but not required, that commenters sign up prior to the hearing by contacting the Conflicts of Interest Board by phone at (212) 437-0730 or by email at lee@coib.nyc.gov.

Is there a deadline to submit comments? Yes, you must submit written comments by [].

This hearing has the following accessibility option(s) available: The Zoom platform accommodates screen reader software. Simultaneous transcription or a sign-language interpreter are available upon request.

Do you need assistance to participate in the hearing? You must tell the Conflicts of Interest Board if you need a reasonable accommodation of a disability at the hearing, including if you need a sign language interpreter or simultaneous transcription. You can advise us by email at lee@coib.nyc.gov or by telephone at (212) 437-0730. You must tell us by [].

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. Copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public on the Conflicts of Interest Board's website (<https://www1.nyc.gov/site/coib/public-documents/open-meetings-and-public-hearings.page>) as soon as practicable.

1
2 **What authorizes the Conflicts of Interest Board to make this rule?** Sections 1043, 2603(a),
3 2603(c)(4), and 2604(b)(5) of the City Charter authorize the Conflicts of Interest Board to make this
4 proposed rule. This proposed rule was included in the Conflicts of Interest Board’s regulatory agenda
5 for this Fiscal Year.

6
7 **Where can I find the Conflicts of Interest Board’s rules?** The Conflicts of Interest Board’s rules
8 are in Title 53 of the Rules of the City of New York.

9
10 **What rules govern the rulemaking process?** The Conflicts of Interest Board must meet the
11 requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made
12 according to the requirements of Section 1043 of the City Charter.
13

14 **STATEMENT OF BASIS AND PURPOSE**

15 In accordance with the mandate of City Charter § 2603(c)(4) for the Board to review all its
16 advisory opinions and initiate rulemaking to adopt those with “interpretative value in construing
17 provisions” of Chapter 68, the Board has been reviewing the 29 advisory opinions it has issued
18 concerning public servants’ acceptance of gifts. In connection with this comprehensive review,
19 the Board proposes to amend Board Rules § 1-01(c), which defines the exception articulated in
20 Charter § 2604(b)(5) to permit a public servant to accept a gift that “is customary on family and
21 social occasions.”

22 Questions from public servants about the applicability of this exception often require
23 detailed consideration to determine whether, on balance, the gift is more closely related to the
24 family or social connection than to the public servant’s City position. Proposed Board Rules § 1-
25 01(c) would provide a simplified framework with two separate subsections: the first for gifts from
26 family members, a defined term; the second for gifts from close personal friends, which often
27 require a more in-depth and fact-sensitive inquiry.

28 **a. Family Members**

1 Proposed Board Rules § 1-01(c)(1) would permit a public servant to accept a gift of any
2 value on family and social occasions from a defined group of “family members.” Proposed Board
3 Rules § 1-01(c)(2) would define “family member” to encompass the definition of “relative” in
4 existing Board Rules § 1-01 with the addition of step-relatives. This expanded definition is
5 consistent with the Board’s determination that public servants are “associated” with their step-
6 family members for the purposes of Charter § 2601(5) in the same manner as they are associated
7 with other close family members. See COIB v. J. Purvis, COIB Case No. 2012-898a (2013)
8 (holding that a public servant was “associated” with his step-daughter for the purposes of Charter
9 §§ 2604(b)(3) and 2604(b)(4)); COIB v. G. Jones, COIB Case No. 2012-458 (2013) (holding that
10 a public servant was “associated” with his step-son for the purposes of Charter § 2604(b)(3));
11 COIB v. Stark, COIB Case No. 2011-480 (2012) (holding that a public servant was “associated”
12 with her step-sister for the purposes of Charter § 2604(b)(3)).

13 **b. Close Personal Friends**

14 Proposed Board Rules § 1-01(c)(3) would clarify existing Board Rules § 1-01(c) by
15 identifying the conditions that determine whether a public servant may accept a gift motivated by
16 a personal friendship with the giver, rather than merely stating that the gift must be shown to be
17 motivated by the personal friendship “under all relevant circumstances.” By requiring that a
18 genuine relationship exists between the friend and the public servant, the Board seeks to avoid the
19 dangers posed by the efforts of developers and lobbyists to become the “new best friends” of public
20 servants making important decisions regarding their business interests and increases confidence
21 that any gifts offered by those friends on family or social occasions are genuinely tied to the
22 occasion.

1 Additional sections may be added to Board Rules § 1-01(c) to address other situations
2 where a public servant may accept an otherwise prohibited gift because the circumstances
3 surrounding that gift indicate that the gift was motivated by a relationship or connection separate
4 and distinct from City service.

5 New material is underlined.

6 Section 1. Section 1-01(c) of Chapter 1 of Title 53 of the Rules of the City of New York
7 is REPEALED and a new Section 1-01(c) is added to read as follows:

8 (c) Gifts from Family Members or Close Personal Friends

9 (1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public
10 servant may accept a valuable gift that is customary on family or social occasions
11 from a family member. “Family member” means:

- 12 i. a spouse, domestic partner, child, grandchild, parent, sibling, or
13 grandparent, of a public servant;
14 ii. a parent, child, or sibling of a spouse or domestic partner; and
15 iii. a spouse or domestic partner of a parent, child, or sibling.

16 (2) For the purposes of this subdivision, “child,” “grandchild,” “parent,”
17 “grandparent,” and “sibling” includes a step-child, step-grandchild, step-parent,
18 step-grandparent, and step-sibling.

19 (3) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public
20 servant may accept a valuable gift that is customary on family or social occasions
21 from a close personal friend with whom that public servant shares a relationship
22 independent of and preceding their City service, provided that the friend is not an
23 owner or employee of a firm with a particular matter pending before the public

1 servant's agency or that has a client with a particular matter pending before the
2 public servant's agency.

SIDE-BY SIDE COMPARISON: BOARD RULES § 1-01(c)

Existing

(c) For the purposes of Charter §2604(b)(5), a public servant may accept gifts that are customary on family or social occasions from a family member or close personal friend who the public servant knows is or intends to become engaged in business dealings with the City, when:

(1) it can be shown under all relevant circumstances that it is the family or personal relationship rather than the business dealings that is the controlling factor; and

(2) the public servant's receipt of the gift would not result in or create the appearance of:

- i. using his or her office for private gain;
- ii. giving preferential treatment to any person or entity;
- iii. losing independence or impartiality; or
- iv. accepting gifts or favors for performing official duties.

Proposed

(c) Gifts from Family Members or Close Personal Friends

(1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public servant may accept a valuable gift that is customary on family or social occasions from a family member. "Family member" means:

- i. a spouse, domestic partner, child, grandchild, parent, sibling, or grandparent, of a public servant;
- ii. a parent, child, or sibling of a spouse or domestic partner; and
- iii. a spouse or domestic partner of a parent, child, or sibling.

(2) For the purposes of this subdivision, "child," "grandchild," "parent," "grandparent," and "sibling" includes a step-child, step-grandchild, step-parent, step-grandparent, and step-sibling.

(3) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public servant may accept a valuable gift that is customary on family or social occasions from a close personal friend with whom that public servant shares a relationship independent of and preceding their City service, provided that the friend is not an owner or employee of a firm with a particular matter pending before the public servant's agency or that has a client with a particular matter pending before the public servant's agency.